

1 WILLIAM J. LAFFERTY (No. 120814)
JEREMY T. KAMRAS (No. 237377)
2 REBECCA M. KAHAN (No. 244423)
HOWARD RICE NEMEROVSKI CANADY
3 FALK & RABKIN
A Professional Corporation
4 Three Embarcadero Center, 7th Floor
San Francisco, California 94111-4024
5 Telephone: 415/434-1600
Facsimile: 415/217-5910
6 E-mail: wlafferty@howardrice.com

7 Attorneys for Chapter 11 Trustee KYLE EVERETT

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 In re
14 MICHAEL J. SCHNEIDER,
15 Debtor.

Case No. 06-50441-MM

Chapter 11 Case

17 OFFICIAL COMMITTEE OF UNSECURED
CREDITORS,
18
19 Appellant,
20 v.

Case No. 07-00219-RMW

Date: July 13, 2007
Time: 9:00 AM
Location: San Jose Division, Ctrm. 6
Judge: Hon. Ronald M. Whyte

21 MICHAEL J. SCHNEIDER,
22 Debtor-in-Possession.
23

24
25 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF**
26 **CHAPTER 11 TRUSTEE'S MOTION TO DISMISS**
27
28

1 Kyle Everett, the Chapter 11 Trustee in the above-captioned putative appeal
 2 (“Appeal”), hereby requests that this Court, pursuant to Federal Rule of Evidence 201 and
 3 Federal Rule of Bankruptcy Procedure 9017, take judicial notice of the following documents
 4 in connection with the Chapter 11 Trustee’s Motion To Dismiss Appeal:

5 1. Chapter 7 Involuntary Petition against Michael J. Schneider, filed below on
 6 March 24, 2006 (Bankruptcy Court Docket No. 1).

7 2. Consent to Order For Relief filed below on March 28, 2006 (Bankruptcy Court
 8 Docket No. 5).

9 3. Order Granting Motion to Appoint Trustee Kyle Everett, filed below on April 7,
 10 2006 (Bankruptcy Court Docket No. 17).

11 4. Order Converting Case to Chapter 11, entered below on April 12, 2006
 12 (Bankruptcy Court Docket No. 20).

13 5. Notice of Appointment of Creditors’ Committee, filed below on August 22, 2006
 14 (Bankruptcy Court Docket No. 233).

15 6. First Amended Appointment of Creditors’ Committee, filed below on September
 16 22, 2006 (Bankruptcy Court Docket No. 292).

17 7. Second Amended Appointment of Creditors’ Committee, filed below on
 18 November 17, 2006 (Bankruptcy Court Docket No. 406).

19 8. Motion to Sell Property Free and Clear: Chapter 11 Trustee’s Motion to
 20 Authorize Sale (Kings Beach Properties), Including Interests of Certain Co-Owners, Free
 21 and Clear of Liens and Interests; Supporting Memorandum of Points and Authorities, filed
 22 below on November 13, 2006 (Bankruptcy Court Docket No. 397).

23 9. Declaration of Kyle Everett in Support of Chapter 11 Trustee’s Motion to
 24 Authorize Sale (Kings Beach Properties), Including Interests of Certain Co-Owners, Free
 25 and Clear of Liens and Interests; Supporting Memorandum of Points and Authorities, filed
 26 below on November 13, 2006 (Bankruptcy Court Docket No. 398).

27 10. Declaration of David Bruening in Support of Chapter 11 Trustee’s Motion to
 28 Authorize Sale (Kings Beach Properties), Including Interests of Certain Co-Owners, Free

1 and Clear of Liens and Interests; Supporting Memorandum of Points and Authorities, filed
2 below on November 13, 2006 (Bankruptcy Court Docket No. 399).

3 11. Declaration of Andre Simone in Support of Chapter 11 Trustee's Motion to
4 Authorize Sale (Kings Beach Properties), Including Interests of Certain Co-Owners, Free
5 and Clear of Liens and Interests; Supporting Memorandum of Points and Authorities, filed
6 below on November 13, 2006 (Bankruptcy Court Docket No. 400).

7 12. Motion to Assume Lease or Executory Contracts: Chapter 11 Trustee's Motion to
8 Assume and Assign Leases (Kings Beach Properties); Supporting Memorandum of Points
9 and Authorities, filed below on November 13, 2006 (Bankruptcy Court Docket No. 402).

10 13. Declaration of Steven Kent Brown in Support of Chapter 11 Trustee's Motion to
11 Assume and Assign Leases (Kings Beach Properties); Supporting Memorandum of Points
12 and Authorities, filed below on November 13, 2006 (Bankruptcy Court Docket No. 404).

13 14. Opposition to Proposed Sale of Real Property (Kings Beach Properties), filed
14 below on November 27, 2006 (Bankruptcy Court Docket No. 438).

15 15. Chapter 11 Trustee's Reply to Opposition by Committee to Trustee's Motion to
16 Authorize Sale (Kings Beach Properties), Including Interests of Certain Co-Owners, Free
17 and Clear of Liens and Interests, filed below on December 4, 2006 (Bankruptcy Court
18 Docket Nos. 456).

19 16. Declaration of Kyle Everett in Support of Chapter 11 Trustee's Reply to
20 Opposition by Committee to Trustee's Motion to Authorize Sale (Kings Beach Properties),
21 Including Interests of Certain Co-Owners, Free and Clear of Liens and Interests, filed below
22 on December 4, 2006 (Bankruptcy Court Docket No. 457).

23 17. Declaration of David Bruening in Support of Chapter 11 Trustee's Reply to
24 Opposition by Committee to Trustee's Motion to Authorize Sale (Kings Beach Properties),
25 Including Interests of Certain Co-Owners, Free and Clear of Liens and Interests, filed below
26 on December 4, 2006 (Bankruptcy Court Docket No. 458).

27 18. Declaration of William J. Lafferty in Support of Chapter 11 Trustee's Reply to
28 Opposition by Committee to Trustee's Motion to Authorize Sale (Kings Beach Properties),

1 Including Interests of Certain Co-Owners, Free and Clear of Liens and Interests, filed below
2 on December 4, 2006 (Bankruptcy Court Docket No. 459).

3 19. Official Transcript of the December 11, 2006, 11:30 a.m. hearing in the case
4 below (Bankruptcy Court Docket No. 505).

5 20. Order on Chapter 11 Trustee's Motion to Assume and Assign Leases (Kings
6 Beach Properties, entered below on January 5, 2007 (Bankruptcy Court Docket No. 518).

7 21. Order Granting Motion to Sell Property Free and Clear of Liens and Co-Owner's
8 Interest (Kings Beach Properties), entered below on January 5, 2007 (Bankruptcy Court
9 Docket No. 519).

10 22. Notice of Dissolution of Committee of Unsecured Creditors, filed below on
11 January 9, 2007 (Bankruptcy Court Docket No. 527).

12 23. Notice of Appeal to District Court, filed below on January 10, 2006 (Bankruptcy
13 Court Docket No. 528).

14 24. Ex Parte Motion to Stay Pending Appeal, filed below on January 10, 2007
15 (Bankruptcy Court Docket No. 531).

16 25. Chapter 11 Trustee's Opposition to Creditors' Committee's Ex Parte Motion for
17 Stay of Orders Pending Appeal, filed below on January 11, 2006 (Bankruptcy Court Docket
18 No. 535).

19 26. Declaration of Steven Kent Brown in Support of Chapter 11 Trustee's Opposition
20 to Creditors' Committee's Ex Parte Motion for Stay of Orders Pending Appeal, filed below
21 on January 11, 2006 (Bankruptcy Court Docket No. 536).

22 27. Order Denying Ex Parte Motion to Stay Pending Appeal, entered below on
23 January 17, 2007 (Bankruptcy Court Docket No. 548).

24 28. Notice of Filing of Bankruptcy Appeal and Order Setting Status Conference,
25 entered herein on January 16, 2006 (District Court Docket No. 2).

26 29. District Court Docket as of May 25, 2007.

27 30. Civil Minutes, entered herein on April 20, 2007.

28 "A court shall take judicial notice if requested by a party and supplied with the

1 necessary information” (Fed. R. Evid. 201(d)) that the facts subject to the request are “not
 2 subject to reasonable dispute” (Fed. R. Evid. 201(b)). Such facts include transcripts of the
 3 proceedings (*see Sandpiper Vill. Condo. Assoc. v. Louisiana-Pacific Corp.*, 428
 4 F.3d 831, 837 n.4 (9th Cir. 2005)) and documents filed in the course of the proceedings
 5 (*Weinstein’s Federal Evidence* §201.12[3] (2006)).

6
 7 DATED: May 25, 2007.

Respectfully,

8 HOWARD RICE NEMEROVSKI CANADY
 9 FALK & RABKIN
 A Professional Corporation

10
 11 By: _____/s/
 WILLIAM J. LAFFERTY

12 Attorneys for Chapter 11 Trustee KYLE EVERETT

13 HOWARD
 14 RICE
 NEMEROVSKI
 CANADY
 FALK
 & RABKIN
 A Professional Corporation